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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,677	09/15/2001	William J. O'Connell	061300-0242	8436
7590	08/19/2004		EXAMINER	
James A. Wilke FOLEY & LARDNER Firststar Center 777 East Wisconsin Avenue Milwaukee, WI 53202-5367			COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 08/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/954,677	O'CONNELL ET AL.	
	Examiner	Art Unit	
	Charles E. Cooley	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on the decision granting 1.47(a) status.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,5,6,8-10,12,13,15-17 and 20 is/are rejected.
- 7) Claim(s) 3,4,7,11,14,18 and 19 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 September 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimile should be transmitted to (703) 872-9306.

2. As the PTO continues to move towards a fully electronic environment, the office will phase-in its E-Patent Reference program. This program: (1) provides downloading capability of the U.S. patents and U.S. patent application publications cited in Office actions via the E-Patent Reference feature of the Office's PAIR system; and (2) ceases mailing paper copies of U.S. patents and U.S. patent application publications with office actions except for citations made during the international stage of an international application under PCT.

Effective June 2004, paper copies of cited U.S. patents and U.S. patent application publications will cease to be mailed to applicants with Office actions from this Technology Center. Paper copies of foreign patents and non-patent literature will continue to be included with office actions.

The U.S. patents and patent application publications cited in office actions are available for download via the Office's PAIR system. As an alternate source, all U.S.

patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources. Inquiries about the use of the Office's PAIR system should be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

Requests to restart a period for response due to a missing U.S. patent or patent application publications will not be granted.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: "104", "105", "204", "121", "124", "127", "233", "236", "239". Correction is required. Applicant should ensure all reference characters mentioned in the specification are included in the appropriate drawing Figure(s).

4. Applicant is required to submit the drawing changes on replacement sheets as outlined below:

37 CFR 1.121 (d) requires that any drawing changes be submitted in compliance with 37 CFR 1.84 on replacement sheets as an attachment to an amendment document. An accompanying detailed explanation of all of the changes should be provided on a separate sheet in the drawing amendments or remarks section of the amendment document. A marked-up copy of one or more of the figures being amended, with annotations, may also be included to provide further explanation of the changes made. The marked-up version must be labeled as "Annotated marked-up Drawings."

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Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per Sec. 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. No further drawing submission of the amended drawing figure(s) by applicant would be required, unless applicant is so notified.

Specification

5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

6. The disclosure is objected to because of the following informalities:

a. Pages 7, 13, and 14 refer to "FIGURE 5" yet the drawings are labeled as Figures 5A and 5B. The specification must be revised to reflect the labeling of the Figures.

Appropriate correction is required.

7. The abstract is acceptable.
8. The title is acceptable.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerst (US 2,662,755).

The patent to Gerst discloses the recited concrete mixer truck with a drum 20 and charging hopper including a movable chute 26; discharge cover 24 coupled to the chute; concave sealing member or shield 72 attached to the discharge cover for engaging at least a lower portion 74 of the drum opening 22; a discharge lip (below 70) which engages the sealing member 72; gussets 40; and chute bracket 46.

11. Claims 1, 2, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarosdy (US 2,572,058).

The patent to Sarosdy discloses the recited concrete mixer truck with a drum 10 and charging hopper including a movable chute 19 (Figs. 1-3) or 48 (Figs. 9 and 11); discharge cover 21 or 55 coupled to the chute; concave sealing member or shield 40 or 67 attached to the discharge cover for engaging at least a lower portion of the drum

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opening (proximate 38 in Fig. 6 or proximate 51 in Figs. 9 and 11); a discharge lip 41 or 69 which engages the sealing member 40 or 67; gussets 24; and chute bracket 25.

12. Claims 1, 2, 6, 8, 9, 12, 13, 15, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3906417 A1.

The patent to DE 3906417 A1 discloses the recited concrete mixer truck with a drum 10 and charging hopper including a movable chute 24; discharge cover 26 coupled to the chute; concave sealing member or shield 34, 36 attached to the discharge cover for engaging at least a lower portion of the drum opening (Fig. 1); a discharge lip 32 which engages the sealing member 34, 36; and chute bracket 22.

Allowable Subject Matter

13. Claims 3, 4, 7, 11, 14, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

The prior art of record does not teach or fairly suggest the recited shield fingers or studs on the discharge cover.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses charging hoppers for concrete mixers and sealing/shield members for use therewith.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles E. Cooley
Primary Examiner
Art Unit 1723

17 AUG 2004